IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1525 OF 1991

1.Gaffur Ismail Kazi,

2.Kamaruddin Ismail Kazi,

3.Hassan Ismail Kazi,

All residing at & Post Pawas,

Taluka and Dist.Ratnagiri. .. Petitioners.

Vs

Shankar Raghu Kamendkar,

by his Mukhtyar Smt Parvatibai

Shankar Kamendkar, r/o Pawas,

Taluka & Dist.Ratnagiri. .. Respondent

Mr S.G.Karandikar, for the petitioners.

Mr. V.C. Ghosalkar, for the respondent.

CORAM : D.B.BHOSALE,J.

DATE : 27th October, 2004.

ORAL JUDGMENT:

1. This petition is directed against a Judgment and order dated 31.12.1990 passed by the Maharashtra Revenue Tribunal, by which the Revision Application filed by the petitioners has been dismissed and the order date 12.5.1989 passed by the Sub-Divisional Officer in Tenancy Appeal No.1/1989 has been confirmed.

2. The petitioners are landlords of the land bearing Survey No.98, Hissa No.7, admeasuring about 6 Gunthas, which is the subject matter of the petition (for short “the said land”). The petitioners as well as the respondent-tenant claim that they have their dwelling house in the said land. Since the revenue record was showing name of the respondent as tenant in the said land, the petitioners filed the application under section 70(b) of the Bombay Tenancy and Agricultural Lands Act,1948 (for short, “the Act”) seeking negative declaration that he is not a tenant in the suit land. In view of the respondent's claim that he has a dwelling house in the said land, the Tahasildar, Ratnagiri directed the DILR to measure the said land and submit his report in respect of the situation of the house in the said land by order dated 11.9.1985. The DILR submitted his report on 31.3.1986 showing that the house of the respondent-tenant situate in Survey No.356. In view of the report of the DILR, the Tahasildar, Ratnagiri allowed the application filed by the petitioners under section 70(b)of the Act and ordered to delete

the respondent-tenant's name from the other rights column. The respondent-tenant challenged the order of the Tahasildar dated 31.5.1985 in 1989, in Appeal before the SDO, Ratnagiri relying upon the measurement carried out by the DILR on 22.7.1988 at his instance. The SDO allowed the appeal by his order dated 12.5.1989. In the revision filed by the petitioners, the Maharashtra Revenue Tribunal confirmed the order passed by the SDO.

3. It is apparent from the order passed by the SDO that the two measurements carried out by the DILR at two different stages, one in pursuance of the order passed by the Tahasildar, Ratnagiri and the other at the instance of the respondent-tenant show that the house of the respondent-tenant situate on different plots of land. The first measurement dated 31.3.1986 shows that the house of the respondent-tenant situate in Survey No.356 while the second measurement dated 22.7.1988 shows the house of the respondent-tenant situate in survey no.98, Hissa No.2. Admittedly, the land in dispute is survey No.98, Hissa No.7. According to the

petitioners, the respondent-tenant claims tenancy on the basis of existence of the dwelling house in the said land. The authorities below have not satisfactorily addressed the controversy in the orders impugned. The learned counsel appearing for the parties, therefore, jointly requested to remand the matter to the SDO with directions to the SDO to get the land once again measured by the DILR to find out where the house of the respondent-tenant exactly situate. The respondent-tenant seems to have claimed tenancy over the land Survey No.98, Hissa No.7 mainly on the basis of the fact that his house situate in the said land. I refrain from expressing any opinion as to whether the respondent is tenant in Survey No.98, Hissa No.7 or whether his house situate in the said land. Considering the controversy involved and conflicting reports of the DILR, I am accepting the request made by both the learned counsel appearing for the parties.

4. In the result, the judgments and order dated 31.12.1990 passed by the Maharashtra Revenue Tribunal and dated 12.5.1990 passed by the Sub Divisional

Officer, are quashed and set aside. The matter is remanded to the SDO, Ratnagiri. The SDO is directed to get the said land measured afresh to find out whether the house of the respondent-tenant situate in the said land and then proceed to decide the Appeal bearing Tenancy Appeal No.1 of 1989 directed against the order dated 31.5.1985 afresh as expeditiously as possible and preferably within a period of six months from the date of receipt of this order. Registry is directed to remit the record along with a copy of this order to the SDO within eight weeks from today. All contentions on merits are left open.

Rule is, accordingly, disposed of.

(D.B.Bhosale, J.)

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